UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,185	03/27/2000	George McBride	CARDIOBEAT-2	3796

7590   07/21/2003

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EXAMINER
KIM, PAUL L

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

-- Th MAILING DATE of this communication appears on the cov r sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>15 May 2003</u> .

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

4)☒ Claim(s) <u>1-19</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-16,18 and 19</u> is/are rejected.

7)☒ Claim(s) <u>17</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)   4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5)☐ Notice of Informal Patent Application (PTO-152)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .   6)☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-3, 8, 9, and 13-16 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Bardy, Boorom et al, and De Luca et al.

With reference to claims 1, 8, 9, 13, 14, and 16, Bardy teaches a method of

providing medical testing comprising: providing a central serving apparatus coupled to

the Internet (fig. 1b, parts 15 & 16) that has access to program algorithms (fig. 3, part

59), uploading medical test measurement data to the server from the remote locations

via the Internet (fig. 1b, part 15 & col. 7, lines 27-40), selecting a computer program

algorithm at the server to process the test data (col. 10, lines 44-50 & 55-59),

processing the medical measurement data in accordance with the selected computer

program algorithm to produce test information (fig. 3, part 56), and downloading the test

information to a user coupled to the internet (col. 7, lines 52-67).

Bardy teaches the Internet apparatus having test measurement software and the

server collecting patient data but does not teach the server downloading test

measurement software to the patient Internet apparatus. Boorom et al teaches a

component testing apparatus in which component-testing software is downloaded from

the server to a client system by request (fig. 4, steps S1 & S2). The client system also

performs the component test (fig. 1). Since Bardy and Boroom et al are both within the

art of performing a test from a client over a network, it would have been obvious to one

of ordinary skill in the art, at the time of the invention, to modify Bardy, so that

measurement software is downloaded from the server to the client, as taught by

Boorom et al, in order to distribute software from one central location to save time and

expense.

Bardy teaches diagnostic data being retrieved from a patient (fig. 1a, part 13) but

does not specifically teach a sensor placed on a patient or the system instructing sensor

placement for a patient. De Luca et al teaches a system for monitoring activities of a

patient over a network that instructs sensor placement on a patient, by multimedia

presentation, to collect diagnostic data (fig. 3, part 21 and col. 7, lines 28-35). It would

have been obvious to one of ordinary skill in the art, at the time the invention was made,

to modify Bardy and Boorom et al, so that the software instructs sensor placement for a

patient, as taught by De Luca et al, in order to assist patients unfamiliar with test

procedures and to collect data easily from a surface of a patient instead of from a

surgically implanted device. Although De Luca et al does not specifically mention

software being used to instruct users, it is inherent that a hand-held computer would

have to rely on software in order to provide instructions.

With reference to claim 2, Bardy teaches providing a database accessible by the

server and storing the information in the database (fig. 1b, part 17).

With reference to claim 3, Bardy teaches receiving patient ID information for the data, storing information in the database, and associating it with patient ID (fig. 12b, part 205).

With reference to claim 15, Bardy teaches providing the test information being multimedia information displayable at the patient Internet apparatus (fig. 1b, part 18).

3.   Claims 4-7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy in view of Basso et al.

With reference to claims 4, 7, and 19, Bardy does not teach receiving a request for the information from a requester and determining if it has authorization. Basso et al teaches a medical system for receiving a request for the information from a requester and determining if it has authorization (col. 1, lines 7-14). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Bardy, so that the medical system has an authorization function, as taught by Basso et al, in order to prevent strangers from accessing sensitive and confidential information.

With reference to claims 5 and 6, Bardy teaches receiving and downloading requests via Internet (col. 7, lines 23-26).

4.   Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy and Boroom et al in view of Shimakawa et al.

With reference to claim 10-12, Bardy and Boroom et al teaches uploading test measurement software to the server, but does not teach automatic un-installing

software after the test data is uploaded. Shimakawa et al teaches a software

management system in which a client computer automatically uninstalls software after it

has been used. It would have been obvious to one of ordinary skill in the art, at the time

the invention was made, to modify Bardy and Boroom et al, so that the medical system

automatically un-installs software after the test data is uploaded, as taught by

Shimakawa et al, in order to prevent unauthorized use of software when the software is

no longer needed.

5.   Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bardy in

view of Pelletier et al.

       Bardy does not teach verifying whether the test data appears to be valid. Pelletier

et al teaches an Internet based patient monitoring system that performs verification on

whether a measurement data appears to be valid data (col. 8, lines 50-62). It would

have been obvious to one of ordinary skill in the art, at the time the invention was made,

to modify Bardy, so that data verification can be performed, as taught by Pelletier et al,

in order to prevent unauthorized use of the patient testing apparatus.

Allowable Subject Matter

6.   Claim 17 is objected to as being dependent upon a rejected base claim, but

would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claims.

R sp ns to Arguments

7.   Applicant's arguments with respect to claims 1-16, 18, and 19 have been

considered but are moot in view of the new ground(s) of rejection.
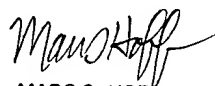
Conclusion

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Paul Kim whose telephone number is 703-305-7468.

The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for

the organization where this application or proceeding is assigned are 703-746-4440 for

regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is 703-308-

0956.

PK
July 10, 2003

MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800